

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LUZENAC AMERICA, INC.,

Plaintiff,

v.

Civil Action No. 5:06CV12
(STAMP)

IMI FABI, LLC,

Defendant.

ORDER CONFIRMING PRONOUNCED RULING ON
PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING
RESOLUTION OF THE COLORADO APPEAL,
DENYING DEFENDANT'S MOTION
TO DISMISS WITHOUT PREJUDICE AND
DENYING AS MOOT DEFENDANT'S MOTION TO STAY DISCOVERY

The above-styled civil action involves claims alleging misappropriation of trade secrets. This action is also related to a separate action currently pending in the United States District Court for the District of Colorado captioned Sanford Lee Hertz v. Luzenac America, Inc. and Luzenac Group, Case No. 04-CV-001961-LTB-CVS (the "Colorado Action"). IMI Fabi, LLC ("IMI Fabi") was formerly a defendant in the Colorado Action, but was dismissed for lack of personal jurisdiction. Luzenac therefore filed the instant action against IMI Fabi in West Virginia. On April 17, 2006, the District Court of Colorado entered an order on cross-motions for partial summary judgment (the "Colorado Order") which order is presently on appeal to the Tenth Circuit Court of Appeals.

IMI Fabi, the defendant here, asserts that the Colorado Order issued on April 17, 2006 has a preclusive effect in the instant

case. Thus, on July 18, 2006, IMI Fabi filed a motion to dismiss under Fed. R. Civ. P. 12(c), or in the alternative, to stay all proceedings. On July 19, 2006, IMI Fabi also filed a motion to stay discovery pending resolution of the motion to dismiss. On August 3, 2006, Luzenac America, Inc. ("Luzenac") filed a motion to stay pending resolution of the Colorado appeal. Luzenac argues that this action should be stayed because if the Colorado Order is reversed on appeal, any order issued by this Court regarding the preclusive effect of the Colorado Order must necessarily also be reversed.

On August 22, 2006, this Court held a motions hearing on these motions. Following oral argument, this Court DENIED Defendant's motion to dismiss without prejudice and GRANTED Plaintiff's motion to stay pending resolution of the Colorado appeal. As a result of this ruling, Defendant's motion to stay discovery is DENIED AS MOOT.

The parties are DIRECTED to promptly advise this Court when the Colorado appeal is resolved or if there are any actions by the Tenth Circuit Court of Appeals about which this Court should be apprised.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: August 28, 2006

/s/ Frederick P. Stamp, Jr. _____
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE